

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Eduardo Benavides, #89008-132,)	C/A No. 2:09-2798-JFA-RSC
)	
Petitioner,)	
vs.)	ORDER
)	
Mary Mitchell, Warden FCI Edgefield,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Eduardo Benavides, brings this action pursuant to 28 U.S.C. § 2241 challenging the actions by the respondent in a disciplinary hearing.

The respondent filed a motion to dismiss and an order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) notifying petitioner of the summary dismissal procedure and possible consequences if he failed to adequately respond to the motion to dismiss. Petitioner did not respond to the motion.

The court then filed a second order on May 7, 2010 allowing the petitioner additional time to respond to the motion to dismiss. However, petitioner did not respond.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this action should be dismissed for lack of

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).


prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation which was entered on the docket on June 2, 2010. No objections, however, have been filed and the time to do so has expired.

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed with prejudice for failure to prosecute under Fed.R.Civ.P. Rule 41(b) and all outstanding motions are deemed moot.

IT IS SO ORDERED.

July 13, 2010
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge